

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2020-279-E**

IN RE:

Pacifica Companies,)
Complainant/Petitioner,)
v.)
Duke Energy Carolinas, LLC,)
Defendant/Respondent.)

**DUKE ENERGY CAROLINAS, LLC's
VERIFIED ANSWER AND
MOTION TO DISMISS**

Pursuant to the Notice issued by the Public Service Commission of South Carolina (“Commission”) on December 7, 2020, S.C. Code Ann. Regs. 103-826, and other applicable South Carolina law, Duke Energy Carolinas, LLC (“DEC” or the “Company”) hereby answers the Complaint of Pacifica Companies (“Pacifica” or “Complainant”) and moves the Commission to dismiss the above-captioned matter on three independent grounds: (1) the Complaint lacks sufficient specificity, factual and legal support, and does not allege a violation of a Commission-jurisdictional statute, rule, regulation or order; (2) the Complaint is moot because the relief requested was achieved several months prior to filing of the Complaint; and (3) Complainant failed to follow the interconnection dispute resolution procedures required under S.C. Code Ann. § 58-27-460(C). The Company also requests that the remaining filing deadlines for all parties and the hearing date be held in abeyance until this motion is resolved. DEC would show as follows:

BACKGROUND

Upon information and belief, Complainant owns Pacifica Senior Living Skylyn, a nursing home located in Spartanburg, South Carolina. The Complaint in this case was submitted to the Commission by a representative of Power Production Management, Inc. (“PPM”), on behalf of

Complainant. Upon information and belief, PPM is a Florida-based installer of rooftop solar photovoltaic generating facilities, and has been acting as an agent for Complainant in facilitating the installation of rooftop solar facilities on the buildings comprising Pacifica Senior Living Skylyn, including the interconnection of such solar facilities to the Company's electrical system.

The Company notes that Complainant does not appear to be represented by counsel as required by the Commission's regulations. S.C. Code Ann. Regs. 103-805 requires that entities like Complainant must "be represented by an attorney admitted to practice law in South Carolina, or an attorney possessing a Limited Certificate of Admission pursuant to Rule 405, SCACR."¹

Upon information and belief, the Company understands that Complainant intends for PPM to install rooftop solar facilities onto each of Pacifica Senior Living Skylyn's three buildings and Complainant intends to utilize the solar facilities to offset Complainant's electric energy requirements through a net metering arrangement, as provided for under S.C. Code Ann. § 58-40-10, *et seq.* This type of arrangement is specifically governed by South Carolina law and requires that Complainant, as a "customer-generator" (as that term is defined in S.C. Code Ann. § 58-40-10(C)), adhere to certain requirements, including that the generating unit complies with certain size limitations and all applicable interconnection standards, as well as satisfies certain safety and reliability standards. Furthermore, the terms and conditions of such net metering arrangements are governed by DEC's Commission-approved Renewable Net Metering ("RNM") Rider.² DEC has interconnected approximately 8,000 solar facilities for net metering in South Carolina, totaling approximately 91,400 kilowatts.

While the Complaint lacks many pertinent facts, it appears to be centered around the

¹ The S.C. Supreme Court's involvement in the review of this regulation is discussed in Order Nos. 2010-121 and 2012-641.

² Rider RNM was most recently approved by the Commission in Order No. 634 issued in Docket No. 2020-3-E.

requested interconnection of one of the solar generating facilities associated with the Pacifica Senior Living Skylyn's buildings. By way of background, Complainant has submitted four Interconnection Requests³ to DEC pursuant to the South Carolina Generator Interconnection Procedures ("SCGIP").⁴ Three of the four Interconnection Requests were submitted in 2018. DEC studied the Interconnection Requests pursuant to the SCGIP and tendered each Interconnection Request an applicable Interconnection Agreement, which Complainant executed.⁵ The Interconnection Request for Queue No. 2018-01289, which is the only specific Interconnection Request mentioned in the Complaint, was received on April 3, 2018, and Complainant and DEC executed an Interconnection Agreement for this proposed generating facility on June 29, 2020. A fourth Interconnection Request was submitted more recently, on November 12, 2020. On December 1, 2020, PPM submitted the Complaint by email to the Commission.

MOTION TO DISMISS

The Complaint should be dismissed on three independent grounds: (1) the Complaint lacks sufficient specificity, factual and legal support, and does not allege a violation of a Commission-jurisdictional statute, rule, regulation or order; (2) the Complaint is moot because the relief requested was achieved several months prior to the filing of the Complaint; and (3) Complainant failed to follow the dispute resolution procedures required under S.C. Code Ann. § 58-27-460(C).

A. The Complaint Lacks Sufficient Specificity, Factual and Legal Support, and Fails to Allege a Violation of a Statute, Rule or Regulation, and Therefore, Should be Dismissed

As a threshold matter, the Complaint lacks sufficient specificity, factual and legal support,

³ Capitalized terms not otherwise defined herein are defined in the South Carolina Generator Interconnection Procedures ("SCGIP").

⁴ See *Order Adopting Interconnection Standard and Supplemental Provisions*, Order No. 2016-191, Docket No. 2015-362-E (Apr. 26, 2016).

⁵ Subsequent to execution of the Interconnection Agreement, on March 10, 2020, Complainant opted to terminate one of the Interconnection Agreements.

and fails to allege any violation of any act, rule, regulation, order, tariff or contract, and, therefore, should be dismissed. S.C. Code Ann. Regs. 103-824 requires that complaints include “[a] concise and cogent statement of the factual situation surrounding the complaint. If a complaint relates to an act, rule, regulation or order administered or issued by the Commission, or to a provision in a tariff or contract on file with the Commission, the act, rule, regulation, order, tariff or contract should be specifically identified in the complaint.” Complainant fails to comply with this requirement, offering only a handful of vague allegations and conclusory statements as “grounds” for the relief requested, without explaining how such allegations actually relate to the relief requested. Complainant makes unsubstantiated statements about DEC’s handling of previous Interconnection Requests, which are not specified or identified in the Complaint, without explaining how such allegations relate to the specifically-identified Interconnection Request that appears to be the subject of the Complaint. In fact, DEC is uncertain precisely which Interconnection Request is the subject of the Complaint to begin with. Moreover, the Complaint provides no facts or any documentation to support the allegations of delay or purported “cost overrun” related to the economics of Complainant’s solar facilities. Complainant also fails to offer any cogent explanation of the relationship between the unfounded allegations and the requested relief (or, any rule or regulation supporting the requested relief). The vague and unsubstantiated allegations are insufficient to properly place DEC on notice of the basis of Complainant’s claims; such material insufficiency deprives DEC of its due process rights to fair notice of the specific relief sought and the related underlying facts. *See Burns v. Wannamaker*, 286 S.C. 336, 339, 333 S.E.2d 358, 360 (Ct. App. 1985) (“The purpose of a pleading is to put the adversary on notice as to the issues involved.”).

The Complaint also fails to meet the “well-pleaded complaint” rule, which requires that

the Complaint actually state a claim. *See Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 180, 826 S.E.2d 585, 588 (S.C. 2019) (“At the Rule 12 stage, . . . the first decision for the trial court is to decide only whether the pleading states a claim.”). “Substantial justice is accomplished when clearly inadequate and frivolous pleadings are summarily dismissed In our State, the complaint is sufficient if it informs the defendant of the ultimate facts supporting each element of the cause of action” *Moore v. City of Columbia*, 284 S.C. 278, 326 S.E.2d 157 (S.C. App. 1984). In this matter, the Complaint’s failure to even assert a cause of action or allege specific facts supporting a specific cause of action warrants dismissal of the Complaint by the Commission.

The Complaint also fails to specify the act, rule, regulation or order the Company is purported to have violated, as is required by S.C. Code Ann. Regs. 103-824. Complainant has failed to allege a violation because DEC has not violated any act, rule, regulation or order; there are therefore no facts at issue in the Complaint that would entitle Complainant to relief from the Commission. *See Carolina Care Plan v. United Healthcare*, 361 S.C. 544, 606 S.E.2d 752 (S.C. 2004) (affirming lower court’s dismissal of complaint because it failed to state any valid claim for relief); *Gilbert v. Miller*, 356 S.C. 25, 586 S.E.2d 861 (S.C. App. 2003) (affirming lower court’s dismissal of complaint because it failed to state facts sufficient to constitute a cause of action upon which relief can be granted).

Complainants’ failure to set forth any facts or law supporting their request, and failure to allege violation of any act, rule, regulation, order, tariff or contract, requires dismissal of this Complaint.

B. The Complaint Should Be Dismissed Because this Matter Is Moot

As an additional, independent ground, the Complaint should be dismissed because the matter is moot inasmuch as the requested relief was achieved several months ago.

A case becomes moot when judgment, if rendered, will have no practical effect on the existing controversy. Order No. 2020-797 at 2, Docket No. 2020-125-E (Dec. 11, 2020); *Sloan v. Greenville County*, 361 S.C. 568, 572, 606 S.E. 2d 464, 466 (2004). Mootness can arise when intervening events render a case nonjusticiable. *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001). A justiciable controversy exists only when there is a real and substantial controversy which is appropriate for judicial determination. *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 25–26, 630 S.E.2d 474, 477 (2006).

On the Complaint form and in the letter attached to the Complaint form, Complainant asks that the Commission order DEC to approve an Interconnection Agreement for the Interconnection Request assigned Queue No. 2018-01289. Complainant and the Company executed an Interconnection Agreement for the Interconnection Request assigned Queue No. 2018-01289 on June 29, 2020. (The Interconnection Agreement is attached hereto as Attachment 1.⁶) As a result, there is no justiciable controversy in this case, a Commission ruling on the requested relief would “have no practical effect,” and the Complaint is moot.⁷

C. The Complaint Should be Dismissed Because Complainant Failed to Follow the Dispute Resolution Procedures Required under S.C. Code Ann. § 58-27-460(C) and the Commission-Approved South Carolina Generator Interconnection Procedures

As an additional, independent ground, the Complaint should be dismissed because Complainant failed to follow the dispute resolution procedures required under S.C. Code Ann. §

⁶ Complainant’s customer-specific account information has been redacted from Appendix 2 of the Interconnection Agreement.

⁷ DEC notes that Complainant may have intended the relief requested in the Complaint to apply to the Interconnection Request received more recently by DEC on November 12, 2020 (which has not been assigned a Queue Number); however, Complainant fails to set forth any facts or allegations specific to that Interconnection Request. DEC has not begun studying this Interconnection Request because the size of the requested generating facility exceeds the size permitted under S.C. Code Ann. § 58-40-10(C) and Rider RNM. DEC notified Complainant of this statutory deficiency on December 2, 2020.

58-27-460(C) and the Commission-approved South Carolina Generator Interconnection Procedures.

South Carolina law requires Interconnection Customers, such as Complainant, to attempt to resolve any claim or dispute with the electrical utility using the dispute resolution procedures provided for in the applicable interconnection standards prior to filing a complaint with the Commission. *See* S.C. Code Ann. § 58-27-460(C). Only if the parties are unable to resolve the claim or dispute using those procedures may either party petition the Commission for resolution of the dispute. *Id.* Pursuant to S.C. Code Ann. § 58-27-460, the Commission approved the SCGIP through Order No. 2016-191 in Docket No. 2015-362-E. Order No. 2016-191 and the SCGIP are attached hereto as Attachment 2 for ease of reference. SCGIP Section 6.2 provides the dispute resolution procedure applicable to this dispute. Section 6.2 provides that in the event of a dispute, either party shall provide the other party with a written notice of dispute. The notice must describe in detail the nature of the dispute. If the dispute has not been resolved within ten (10) business days after receipt of the notice, either party may contact the Office of Regulatory Staff for assistance in informally resolving the dispute. Consistent with S.C. Code Ann. § 58-27-460(C), Section 6.2 states that if the parties are unable to informally resolve the dispute, either party may then file a formal complaint with the Commission.

Complainant has not initiated any notice of dispute, as required pursuant to SCGIP Section 6.2 and S.C. Code Ann. § 58-27-460(C). Accordingly, the Complaint should be dismissed.

ANSWER

DEC denies all allegations contained in the Complaint not otherwise expressly admitted herein. Although the vagueness of the allegations contained in the Complaint prevent DEC from

wholly and specifically responding, DEC addresses the allegations contained within the Complaint, to the extent possible, as follows:

DEC denies the allegation that it is the cause of “a three-year delay and a cost over-run of over \$100,000” as to any Interconnection Request Complainant submitted to DEC pursuant to the SCGIP. The Company is without sufficient information to admit or deny any and all allegations regarding the “design” of Complainant’s “project” and the extent to which it has been accepted by other utilities. As described previously, the Company is without sufficient information to even identify to what “project” such allegations relate. The Company denies that Complainant has re-submitted three Interconnection Requests or that the Company has “lost” any of Complainant’s Interconnection Requests.

The Company denies that it has failed to properly communicate with Complainant. The Company denies that it has “obscure[d] the [interconnection] process” or “push[ed] further delays.” To the contrary, the Company has consistently communicated with PPM as Complainant’s agent and has made reasonable efforts to process Complainant’s Interconnection Requests consistent with the SCGIP.

CONCLUSION

DEC moves the Commission to dismiss this matter on three independent grounds: (1) the Complaint lacks sufficient specificity, factual and legal support, and does not allege a violation of a Commission-jurisdictional statute, rule, regulation or order; (2) the Complaint is moot because the relief requested was achieved several months prior to the filing of the Complaint; and (3) Complainant failed to follow the dispute resolution procedures required under S.C. Code Ann. § 58-27-460(C). The Company also requests that the remaining filing deadlines for all parties and the hearing date be held in abeyance until this motion is resolved.

Respectfully submitted this 6th day of January 2021.



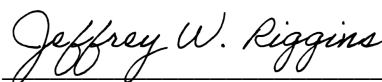
Rebecca J. Dulin
Associate General Counsel
Duke Energy Carolinas, LLC
1201 Main Street, Suite 1180
Columbia, South Carolina 29201
Telephone: 803.988.7130
rebecca.dulin@duke-energy.com

Frank R. Ellerbe, III (SC Bar No. 01866)
Samuel J. Wellborn (SC Bar No. 101979)
ROBINSON GRAY STEPP & LAFFITTE, LLC
P.O. Box 11449
Columbia, SC 29211
(803) 929-1400
fellerbe@robinsongray.com
swellborn@robinsongray.com

Attorneys for Duke Energy Carolinas, LLC

CERTIFICATION

I, Jeff Riggins, state and attest, under penalty of perjury, that I have reviewed the foregoing Duke Energy Carolinas, LLC's Answer and Motion to Dismiss, and, in the exercise of due diligence, have made reasonable inquiry into the accuracy of the information and representations provided therein; and that, to the best of my knowledge, information, and belief, all information contained therein is accurate and true and contains no false, fictitious, fraudulent or misleading statements; that no material information or fact has been knowingly omitted or misstated therein, and that all information contained therein has been prepared and presented in accordance with all applicable South Carolina general statutes, Commission rules and regulations, and applicable Commission Orders. Any violation of this Certification may result in the Commission initiating a formal review proceeding. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.



Name: Jeff Riggins

Title: Director Standard PPAs and Interconnects
Duke Energy Carolinas, LLC